

# ***City Council Meeting Minutes***

**April 7, 2020  
Electronic Meeting  
7:00 PM**

**Call to Order** – Mayor Stolzmann called the meeting to order at 7:00 p.m. Roll call was taken and the following members were present:

**City Council:**      ***Mayor Ashley Stolzmann  
Mayor Pro Tem Dennis Maloney  
Councilmember Kyle Brown  
Councilmember J. Caleb Dickinson  
Councilmember Deborah Fahey  
Councilmember Chris Leh  
Councilmember Jeff Lipton***

**Staff Present:**    ***Heather Balser, City Manager  
Megan Davis, Deputy City Manager  
Kevin Watson, Finance Director  
Rob Zuccaro, Planning & Building Safety Director  
Megan Pierce, Economic Vitality Director  
Meredyth Muth, City Clerk***

**Others Present:**   ***Kathleen Kelly, City Attorney***

## **APPROVAL OF AGENDA**

Mayor Stolzmann called for changes to the agenda and hearing none she asked for a motion to approve. Councilmember Lipton moved to approve the agenda; seconded by Councilmember Dickinson. **Vote:** Approved by unanimous roll call vote.

## **PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA AND THE CONSENT AGENDA**

John Milanski, 450 Fillmore Court, reminded everyone of the upcoming Fire District election on May 5.

## **APPROVAL OF THE CONSENT AGENDA**

Mayor Stolzmann called for changes to the consent agenda; hearing none she asked for a motion to approve the consent agenda. Mayor Pro Tem Maloney moved to approve the

consent agenda; seconded by Councilmember Lipton. **Vote:** Approved by unanimous roll call vote.

- A. *Approval of Bills***
- B. *Approval of Minutes: March 16, 2020; March 17, 2020***
- C. *Approval of Special Meeting on April 14 at 7:00 PM***
- D. *Approval of Contracts for Presiding Judge and Deputy Judges for the Louisville Municipal Court***

### **COUNCIL INFORMATIONAL COMMENTS ON PERTINENT ITEMS NOT ON THE AGENDA**

Mayor Stolzmann reminded everyone to wear a non-medical mask while out of the house and to continue with hand washing and she reminded those with symptoms to stay home.

Councilmember Dickinson stated the community has come together and urged them to continue to do so.

### **CITY MANAGER'S REPORT**

City Manager Balser reminded everyone to continue to check the City's website for the most up to date information and to sign up for the City's enotifications.

### **REGULAR BUSINESS**

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#### **DISCUSSION/DIRECTION – ECONOMIC VITALITY STRATEGIC PLAN, BUSINESS IMPACTS FROM COVID-19, AND CONSIDERATION OF FINANCIAL ASSISTANCE**

Director Pierce noted circumstances have changed in recent weeks for most businesses and this presentation now includes discussion of possible ways to help. She reviewed the process the Economic Vitality Committee has been using for creating the economic vitality plan.

She stated for the past three weeks she has been working to make sure businesses have clear and up to date information about the pandemic and has been getting information out to residents on how they can support local businesses. She thanked the Chamber of Commerce and Downtown Business Association for helping in the process. Staff created a support local campaign, has created a food and beverage map, and has completed a survey of local businesses about how they have been affected by closures. She reviewed the results of the survey.

Director Pierce stated staff is proposing an emergency grant program. She noted some communities already had structures in place for these types of programs but Louisville

does not. She stated staff suggests a grant program as we do not have the administrative capacity to oversee a loan program or something more complicated.

For program eligibility staff is suggesting including only Louisville businesses that are current on City accounts. She added staff is thinking the criteria needs to be mostly not technical. Staff will need to be able to review applications fairly and equitably with clear criteria; without clear criteria it will be very hard for staff to administer. Staff is looking for direction from Council on the criteria. Some suggested considerations include brick and mortar locations (not home based), number of employees, and tied to sales or other taxes. Director Pierce reviewed a number of other criteria that could be considered.

#### Public Comments

Mark Oberholzer, Chair of Business Retention & Development Committee and owner of TILT Pinball and the Corner, stated it is important for the Louisville program to be different from the Federal programs. He suggested programs that help businesses adapt quickly to the changing conditions. He encouraged the Council to hurry to get these funds out to businesses.

Shelly Angell, Chamber of Commerce Director, noted things are changing rapidly and the need for this program is large. The businesses need help as fast the City can get it out.

Rick Kron, Downtown Business Association President, agreed with the other speakers that the need is great. He suggested streamlining the application process and allowing grantees to use the money at their discretion. He asked the public to continue to support local businesses.

Sherry Sommer, 910 South Palisade Court, asked if the Council would determine how much it will dedicate to the program and the timing of the program tonight. She also asked if employees of local businesses could be used in a way to contribute back to the City.

David Sinkey, Boulder Creek Homes, stated he agreed with the earlier speakers that the program is needed and speed is of the utmost importance.

Mayor Stolzmann stated this discussion is meant to give staff direction and she suggested once that is done letting staff run with the program to get it started quickly.

Councilmember Dickinson stated the overall goals of the new Economic Vitality Committee are to help businesses create revenue so it can fund the quality of life in town. The Committee wants to make sure the City has the tools it needs to do this and the ability to help with business retention and development. In the current situation these are all still important goals as we adapt to meet the crisis.

Councilmember Dickinson stated the proposed grant program is important. Council needs to give direction on the way to provide money, the amount, who will qualify, when it can start, and the application process.

Mayor Stolzmann stated this may be a phased program as well. This program will be focused but there may be other areas we need to address later. What goals does the Council want to address with the program.

Mayor Pro Tem Maloney agreed time is of the essence and this should be a small business assistance program. We need to consider business resumption as a future phase.

Members agreed this should be a small business assistance program.

Mayor Stolzmann asked what the initial budget might be. She suggested taking \$250,000 from the General Fund to pay for the program. She noted Councilmember Lipton will ask the Revitalization Commission if they could put some funding towards the program at their next meeting.

Councilmember Lipton stated he hopes this is the first phase of help the City can provide to help small businesses.

Councilmember Brown suggested a larger grant program to help the economy as a whole and would like a program that fills a gap that other programs don't cover.

City Manager Balser stated staff needs direction on the criteria so that staff and Council's expectations align. She noted the criteria will determine how many grants the City can afford.

City Attorney Kelly noted whatever is decided a Council resolution will be needed to approve this and added the Council will need to make clear the specific purposes of the program to meet constitutional requirements.

Members agreed it should be a grant program and agreed to start with \$250,000 in funding. Members noted that until the Council has a better grasp of the effects of this downturn on the City budget it is hard to commit additional funding.

Members discussed some of the eligibility and criteria for applications including having a brick and mortar location in town and being current on all City accounts. Members were generally supportive of requiring a local brick and mortar location.

Councilmember Leh would like some restrictions on how the money can be spent; it can't be spent on a tax lien for instance.

Councilmember Brown would like to prioritize those businesses that were hit hardest such as restaurants and salons which were required to close under the governor's order.

Mayor Stolzmann asked what size of businesses the Council wants to target with the program. Members discussed various options about how to determine a size including how to count employees (full-time, part-time, or full-time equivalents). Members generally agreed on a size limit of 50 employees or 25 full-time equivalents.

Mayor Stolzmann asked members what types of businesses they want the program to target.

Councilmember Lipton suggested prioritizing sales-tax producing businesses rather than services. Mayor Pro Tem Maloney agreed; for him this is an important criteria for the City.

Councilmember Dickinson stated that might be good for prioritizing the funding but they should be allowed to apply. He noted many service businesses are affected and they should not be ruled out.

Director Pierce noted that she will need clear eligibility criteria for the program to be successful and transparent. If the eligibility is too broad it will require a lot of review time. Staff would like less discretion and more clear criteria that creates a transparent process; something less subjective.

Councilmember Brown would like to make sure the funding gets to those low income businesses who will spend the money quickly. If speed is of the essence we need clear criteria and if that is met you can get the grant.

Mayor Stolzmann stated she would support grants for businesses that produce sales tax and those which do not. Many businesses have no way to do business remotely so they have to be closed. Councilmember Fahey agreed those business also need our support.

Councilmember Lipton suggested having a separate program for service businesses and use this program for sales tax producing businesses.

Councilmember Leh stated service businesses have an impact in the community other than sales tax and they should be considered for funding.

Mayor Pro Tem Maloney supports a clear precise program that can be implemented quickly.

Councilmember Lipton suggested having the Economic Vitality Committee discuss this and bring a suggested program back to the Council.

Mayor Stolzmann summarized the Council's thoughts on the types of businesses to support noting support for sales tax-generating businesses or those required to be closed under the governor's orders.

Mayor Stolzmann asked what eligible expenditures the Council wants to consider.

Councilmember Dickinson suggested rent be an eligible expenditure.

Councilmember Lipton suggested the list of expenditures be left very broad. Most members agreed.

Members generally supported a program with a finite deadline not a rolling deadline so all applications can be reviewed and scored together.

Mayor Stolzmann reviewed the general consensus so far:

- want a small business assistance grant program;
- hope to have multiple phases to the program;
- want to allow businesses to spend the funds in a variety of ways;
- will look to see if the Revitalization Commission can contribute to the funding;
- want to fill a gap that other programs don't cover;
- want to give grants to those with a physical presence in town;
- applicants should be current on all City accounts;
- applicants should have 25 full-time equivalents/50 employees or fewer.

Members also agreed applicants need to be able to show a loss due to Covid-19.

Councilmember Lipton reiterated his suggestion to send the program to the Economic Vitality Committee to bring a suggestion back to Council. Councilmembers Leh and Mayor Pro Tem Maloney agreed.

Mayor Stolzmann was concerned that taking time to go to the committee would add more time to the process.

Councilmember Lipton moved to refer this to the program to the Economic Vitality Committee; seconded by Councilmember Leh.

**Roll Call Vote** Approved 4-3 to send to the Economic Vitality Committee for more work. Mayor Stolzmann, Councilmember Dickinson, and Councilmember Brown voting no.

**RESOLUTION NO. 30, SERIES 2020 – A RESOLUTION REGARDING QUASI-JUDICIAL HEARINGS AT MEETINGS CONDUCTED BY ELECTRONIC PARTICIPATION**

Mayor Stolzmann introduced the item. City Attorney Kelly stated that in March in response to facility closure due to Covid-19 the Council changed its Rules of Procedure to authorize the Council to meet electronically. On April 7, the Council also authorized other City boards and commissions to meet electronically as well. However, neither the City Council nor any boards may hold quasi-judicial hearings electronically.

If approved this resolution would allow the Council to do three things:

1. amend the City Council Rules of Procedure to allow the City Council to hold quasi-judicial hearings at electronic meetings if it finds “the nature and expected duration of a health epidemic or pandemic or other state of emergency affecting the City is or will be extraordinary” and procedures have been adopted by Resolution;
2. make the finding required by the City Council Rules of Procedure, that the COVID-19 Pandemic is extraordinary because current information indicates the City Council and appointed bodies may not be able to meet in person for an extended period of time; and
3. authorizes the City Council and appointed bodies to hold quasi-judicial hearings at meetings held by electronic means according to the procedures set forth in the Resolution.

The procedures in the resolution are designed to satisfy constitutional due process requirements of notice and a fair hearing before an impartial decision-making body and procedures have been drafted to provide some administrative flexibility moving forward. Electronic quasi-judicial hearings will be optional at the request of the applicant and applicants will be required to acknowledge the legal risk involved and agree to proceed electronically at their own risk. Those applicants must also agree to defend and indemnify the City in case of any legal challenge arising from holding the hearing electronically. This specifically covers applications under the City’s zoning code.

If an applicant does not want to take the risk, or will not agree to the conditions in the Resolution, the matter will not be scheduled until an in-person hearing can be provided. Also, if at any point there are technical or other challenges that make it no longer feasible or prudent to hold the hearing electronically, the City Manager or their designee can vacate the electronic hearing.

City Attorney Kelly noted residents have raised concerns with the resolution relating to the constitutional processes for referendum. City Attorney Kelly noted this is a valid concern as the referendum process does include zoning and rezoning applications and if a resident wants to move forward with a referendum it would require an in-person signature gathering process.

In response to that concern, Council could amend the resolution to state that those matters subject to the referendum process cannot be heard by the Council in an electronic meeting. This would allow most routine business to move forward. There are

currently three applications in the planning process that could not move forward with that amendment.

#### Public Comments

Sherry Sommer, 910 South Palisade Court, asked what the three applications that cannot move forward are. She added she feels the timing on this is bad.

Mayor Pro Tem Maloney asked if the indemnification language is really needed. He thinks applicants will never agree to move forward electronically with that requirement.

City Attorney Kelly stated the intent is to give the applicant a way to move forward or wait for an in person meeting while protecting the City's interests.

Mayor Stolzmann noted Council received a number of emails on this issue and they have been entered in to the public record.

Councilmember Leh asked why zoning and rezoning matters are subject to the referendum process. City Attorney Kelly stated the courts have determined zoning and rezoning decisions are policy driven and as such are hard to distinguish from other legislative actions. Therefore citizens should have the ability to circulate petitions to have a referendum on those decisions.

She noted zoning and rezoning applications would be subject to this and that includes GDP amendments.

City Attorney Kelly noted there are quasi-judicial matters outside of the land use process this would affect. Approving this resolution would allow a liquor license application to move forward as well as landmarking applications or Board of Adjustment hearings. Basically any quasi-judicial application that is not a zoning or rezoning could move forward.

Councilmember Brown asked if this could be tied to a specific time frame, perhaps only if Council cannot meet in person after a certain date. City Attorney Kelly stated that is up to the Council.

Councilmember Dickinson stated he supports the resolution so that applicants can move forward with their projects and not have to have the added expense of delays. The process would still be transparent and open to the public. We need to be flexible to keep things moving in this shutdown or future ones.

Mayor Pro Tem Maloney agreed this can be a transparent process electronically and we need to be able to take public comment. He too would like to see options for projects to move forward. He also supports an amendment to note those items subject to referendum cannot be handled electronically.



Mayor Stolzmann stated during a health crisis it is fair to assume not all City business can take place however, she does not support this resolution. Boards can call meetings as soon as the executive order is rescinded to help move projects along. The issue is equal access for all. There are members of the community who do not have computers and cannot access an electronic meeting to give comments. Proper due process is needed for both the applicants and the public. The lack of public participation is too big a risk and she feels the resolution is problematic.

Councilmember Brown stated this is not needed yet. Most quasi-judicial items can wait until in-person meetings are allowed. Given the severity of the situation most items can wait and the City should be focusing on relief programs. We are not at the point we need to consider this.

Councilmember Leh stated he does not think this is necessary yet. There may be reason to do this at some point, but not right now. He is also concerned electronic meetings are not ADA compliant. This should only be considered if and only if we can assure participation by all parties.

Councilmember Fahey stated she supports delaying the resolution until more thought can be put into how to handle it better and she supports the change for removing items subject to referendum from the process.

Councilmember Dickinson reiterated his support for the resolution stating applicants should not have to incur extra costs waiting for an in person meeting. This gives the ability for non-controversial projects to move forward. It is imperfect but we need to be able to adapt.

Councilmember Lipton stated the City will have to move forward in some way and also address other changes that might be coming in the future. This gives us a backup process to deal with the routine matters. He supports the amendment to remove the referendum items.

Councilmember Brown moved to continue this item to May 5; seconded by Mayor Stolzmann.

Councilmember Brown stated this might be premature. We all want the City to continue to function but until we have more clarity on how long this will last and what the impacts are and this can wait.

Mayor Pro Tem Maloney asked if the indemnification language needs to be included in the resolution. City Attorney Kelly stated that decision is up to the Council. Mayor Pro Tem Maloney would like it removed as he feels no applicant will agree to it.

Councilmember Leh stated he feels the indemnification language should be removed. He gave a friendly amendment that when this comes back to Council it include information on if electronic meetings are ADA compliant. Motioner and seconder agree to friendly amendment.

Councilmember Dickinson does not support the delay as it may cost applicants a lot of money. Councilmember Lipton agreed; some projects should be able to move forward. It is not beneficial to the City or citizens to hold up everything.

Mayor Stolzmann supports the motion. Due process is critically important. We have recognized the financial loss to applicants but not the risk to the public who might oppose a project. The public process is critically important.

Mayor Pro Tem Maloney stated the changes for referendum items addresses most of the public comments we received and we need a way to move some items forward in the process in these times.

Councilmember Leh reiterated his concerns with the resolution and he supports delaying this to May 5.

Councilmember Dickinson stated he wants action tonight so people don't have to wait another month to move routine items forward.

**Roll call vote:** 3-4 vote, motion failed. Voting no were Councilmember Fahey; Mayor Pro Tem Maloney; Councilmember Dickinson; Councilmember Lipton.

Mayor Pro Tem Maloney moved to approve the Resolution with the amendment to state that items subject to referendum may not be heard in electronic hearings; seconded by Councilmember Dickinson.

Councilmember Leh made a friendly amendment to strike the indemnification requirement in the resolution. Motioner and seconder agreed to the amendment.

Councilmember Brown stated he feels the indemnification language is necessary. He made an additional friendly amendment that no quasi-judicial hearings be held before May 1. Motioner did not accept the friendly amendment.

Mayor Stolzmann stated she feels the processes established by the Constitution for how we handle quasi-judicial cases are important. She added there is a loss of public trust in the government these days and she is concerned this adds to that. She does not support the resolution.

After further discussion Councilmember Leh rescinded his friendly amendment. He would like the indemnification language included in the resolution.

Councilmember Dickinson stated his goal is not to change how we do business normally but only during this emergency.

**Roll Call Vote:** 4-3 approved. Voting no were Mayor Stolzmann, Councilmember Brown; and Councilmember Leh.

### **CITY ATTORNEY'S REPORT**

No report.

### **COUNCIL COMMENTS, COMMITTEE REPORTS, AND IDENTIFICATION OF FUTURE AGENDA ITEMS**

ECONOMIC VITALITY COMMITTEE – no report

FINANCE COMMITTEE – no report

LEGAL REVIEW COMMITTEE – no report

UTILITY COMMITTEE – Councilmember Lipton stated they are planning to meet in early May.

COLORADO COMMUNITIES FOR CLIMATE ACTION – no report

COMMUTING SOLUTIONS – no report

CONSORTIUM OF CITIES – no report

DOWNTOWN BUSINESS ASSOCIATION STREET FAIRE – Councilmember Lipton stated the Committee is looking to move the June dates to August if possible.

DENVER REGIONAL COUNCIL OF GOVERNMENTS – Mayor Stolzmann stated DRCOG is working on Vision Zero and an expanded grant program that might make funding available for some of our projects.

JOINT INTEREST COMMITTEES (SUPERIOR & LAFAYETTE) – no report

MAYORS & COMMISSIONERS COALITION – Mayor Stolzmann reported the group is working on railroad quiet zones.

METRO MAYORS CAUCUS – Mayor Stolzmann stated they are meeting weekly on economic recovery issues.

REVITALIZATION COMMISSION – Councilmember Lipton stated they are meeting next week.

XCEL ENERGY FUTURES – Mayor Pro Tem Maloney stated the next meeting is in late May.

ADVANCED AGENDA – Councilmember Lipton would like to discuss at a future agenda, community resources for residents during this emergency. Councilmember Dickinson agreed.

**ADJOURN**

Members adjourned at 11:30 pm.

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Ashley Stolzmann, Mayor

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Meredyth Muth, City Clerk